91-475

No. ——

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

METROPOLITAN LIFE INSURANCE COMPANY,
Petitioner,

v.

BEATRICE HINDS CARLAND,
Respondent.

Petition for a writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Employee Retirement Income Security Act of 1974 [29 U.S.C. § 1001-1461] ("ERISA") pre-empt a state divorce decree which conflicts with an ERISA beneficiary designation?

2. Did the Tenth Circuit Court of Appeals improperly amend ERISA by judicial decree when it extended the qualified domestic relations order ("QDRO") exception to ERISA pre-emption, which Congress expressly limited to "*pension* plan" benefits, so as to apply to employee "*welfare* benefits"?

PARTIES TO THE PROCEEDING

The names of all parties appear in the caption.

LIST NAMING ALL PARENT COMPANIES AND SUBSIDIARIES OF PETITIONER AS REQUIRED BY RULE 29.1 OF THIS COURT

ASSET MANAGEMENT INTERNATIONAL, INC.
ASSOCIATED ADVISORS FUND, INC.
CS FIRST BOSTON GLOBAL FUND MANAGERS LTD.
DTSS INCORPORATED
EUROPEAN & PACIFIC INVESTMENT MANAGEMENT
GENESIS SEGUROS GENERALES, SOCIEDAD ANONIMA DE SEGUROS Y REASEGUROS
KOLON-MET LIFE INSURANCE CO., LTD.
MECCO HOLDING, INC.
MET LIFE INTERNATIONAL REAL ESTATE EQUITY SHARES, INC.
METLIFE AGRICULTURAL CREDIT CORP.
METLIFE FINANCIAL SERVICES, INC.
METLIFE FUNDING, II, INC.
METLIFE HEALTHCARE NETWORK OF CALIFORNIA, INC.
METLIFE HEALTHCARE NETWORK OF NORTHEAST FLORIDA, INC.
METPARK FUNDING, INC.
METROPOLITAN LIFE FOUNDATION
METROPOLITAN MANAGEMENT COMPANY
METROPOLITAN SERIES FUND, INC.
METROPOLITAN STRUCTURES WEST, INC.
MONTREAL INVESTMENT MANAGEMENT
MORGUARD RESOURCES LIMITED
NATIONAL ELECTRONIC INFORMATION CORPORATION
PARKCOMMUNICATIONS, INC.
QUADREAL CORPORATION
SANTANDER MET, S.A.

SEGUROS GENESIS, S.A.
TORONTO INVESTMENT MANAGEMENT
UR HOLDING COMPANY, INC.
VANBRIT INVESTMENT MANAGEMENT

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PETITION FOR A WRIT OF CERTIORARI

Metropolitan Life Insurance Company ("MetLife" or the "Company") respectfully requests that this Court issue a writ of certiorari to review the final judgment of the United States Court of Appeals for the Tenth Circuit, entered in this case on June 4, 1991. Pursuant to that judgment, a settlement agreement incorporated into a state divorce decree, which was not a document or instrument governing MetLife's employee welfare benefit plan, was held to pre-empt a plan participant's beneficiary designation, when in fact the law requires that the ERISA beneficiary designation should have pre-empted *it*. If the judgment of the Tenth Circuit were to remain binding precedent, it would require ERISA fiduciaries making payment decisions in the Tenth Circuit to act in contravention of the duty imposed on them by federal law to act solely in the interest of plan participants and beneficiaries, as determined by plan documents and instruments. It would also perpetuate a conflict with the decisions of other Courts of Appeals, allow an important question of federal law which should be settled by

this Court to remain undecided, and permit a federal question to be decided in a way which conflicts with applicable decisions of this Court. MetLife therefore respectfully requests that the petition be granted.

OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED

The opinion of the District Court, No. 88-1713-K, is reported officially at 727 F. Supp. 592 (D. Kan. 1989) and unofficially at 11 Employee Benefits Cases 2601.

The opinion of the Court of Appeals, No. 90-3014, is reported officially at 935 F.2d 1114 (10th Cir. 1991), and unofficially at 13 Employee Benefits Cases 2350.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

(i) The final judgment of the Court of Appeals sought to be reviewed was entered on June 4, 1991.

(ii) The order of the Court of Appeals denying petitioner's motion for a rehearing (and rehearing *en banc*) was filed on June 21, 1991. (34a).

(iv) Section 1254(1) of Title 28 of the United States Code confers jurisdiction on this Court to review the judgment of the Court of Appeals by writ of certiorari.

STATUTES INVOLVED IN THE CASE

The statutes involved in the case are ERISA § 2 [29 U.S.C. § 1002] (Definitions), paragraphs (1), (2)(A), and (8); ERISA § 404 [29 U.S.C. § 1104] (Fiduciary duties), paragraph (a)(1); ERISA § 206 [29 U.S.C. § 1056] (as amended by the Retirement Equity Act of 1984) (Form and payment of benefits) paragraphs (d)(1), (d)(3)(A), (d)(3)(B), (d)(3)(C), (d)(3)(D), (d)(3)(G), (d)(3)(H), (d)(3)(I), (d)(3)(J), (d)(3)(K); and ERISA § 514 [29 U.S.C. § 1144] (Other laws), paragraphs (a), (b)(7), and (c)(1), all of which are reproduced in the appendix to this petition.

STATEMENT OF THE CASE

A. Facts Material to the Questions Presented

Ralph C. Carland, a deceased employee of MetLife, participated in MetLife's employee welfare benefit plan, which provided group life insurance benefits to his designated beneficiaries. MetLife is the fiduciary. Respondent, Beatrice Hinds Carland, Mr. Carland's former wife, was originally Mr. Carland's sole designated beneficiary. They were divorced on September 4, 1964.

On March 1, 1974, approximately ten years later, Mr. Carland completed two conflicting beneficiary designation forms on the same date, only one of which was ever endorsed as "RECORDED AT THE HOME OFFICE OF THE METROPOLITAN LIFE INSURANCE CO. IN NEW YORK, N.Y." The unendorsed form designated Olive Kohlmeyer Carland—his wife then and at that time of his death, thirteen years later—as sole primary beneficiary. The second form, which *was* endorsed as recorded, "revoke[d] any previous designations of beneficiary and contingent beneficiaries" he had made and expressly designated Beatrice Hinds Carland "as beneficiary to receive $13,000 of the Life Insurance proceeds" here at issue while Olive Kohlmeyer Carland was designated as the beneficiary "for any amount in excess of $13,000." It is not clear which of the two beneficiary designation forms is the one Mr. Carland actually completed first, but, as noted, only the latter was endorsed as "RECORDED."

The MetLife plan expressly provided at the relevant time that:

> Any Employee insured hereunder may, from time to time, change the Beneficiary designated in his certificate by filing written notice thereof with the Insurance Company accompanied by the certificate of such Employee. Upon receipt of such notice and the certificate the Insurance Company shall thereupon en-

> dorse such change on the certificate. Such change shall take effect upon endorsement thereof by the Insurance Company on such certificate and unless the certificate is so endorsed, the change shall not take effect. . . .
>
> If, at the death of any Employee insured hereunder, there shall be more than one designated Beneficiary, then, unless such Employee shall have specified the respective interests of such Beneficiaries, the interests of such Beneficiaries shall be several and equal. . . .

The MetLife Summary Plan Description provided that:

> The beneciary is the person you choose to receive any benefit payable because of your death. You make your choice in writing on an approved form which you must file with the Company.
>
> . . .
>
> You may change the beneficiary at any time by filing a new form with the Company. You do not need the consent of the beneficiary to make a change. When the Company receives a form changing the beneficiary the change will take effect as of the date you signed it. . . .
>
> . . . If you designate more than one beneficiary, payment will be made in equal shares to each surviving beneficiary, or all to the last survivor, unless you specify otherwise. . . .

After the April 9, 1987 death of Ralph C. Carland, MetLife received claims for payment from both of Mr. Carland's designated beneficiaries. Respondent included a copy of her divorce settlement agreement with Mr. Carland with her claim for benefits. The divorce settlement agreement provided:

> The Second Party [Ralph C. Carland] shall convey to First Party [Beatrice Hinds Carland] all of his interest in the 1959 Buick sedan and the 1954 Ford Tudor sedan which are owned by First and

> Second Parties, and shall likewise agree to make irrevocable designation of First Party as the sole primary beneficiary under and of the policies of insurance on the life of Second Party listed in Schedule "A" hereto attached and made a part hereof by reference, upon which the premiums shall be paid by Second Party.

(Bracketed matter added). Schedule "A" in turn stated, in its entirety:

SCHEDULE "A"

Policies of Insurance on Life of Ralph C. Carland

Policy No.	Company	Face Amount
17 038 285A	Metropolitan Life Ins. Co.	$ 5,000.00
22 127 306A	Metropolitan Life Ins. Co.	10,000.00
21 300 423	New York Life Ins. Co.	5,000.00
21 372 985	New York Life Ins. Co.	5,000.00
Ctf. 134181	Metropolitan Life Ins. Co.	Current value, less 1000.00

Although Mr. Carland had previously filed the above Schedule "A" with the Plan, he had not filed the settlement agreement or the divorce decree to which it was originally attached. Rather, he had filed the Schedule as an attachment to a personal letter, dated February 15, 1974, two weeks before he completed the conflicting March 1, 1974 beneficiary designations quoted above. The letter said:

> Please note that the attached schedule is from my divorce decree of September 4, 1964, Case 13926. The decree provides that my Group Life Insurance is designated to go to my divorced wife—Beatrice Hinds Carland—in the amount of the current value, less $1,000.00 as of the date of the decree.
>
> Therefore, I direct the Company to make the following beneficiary designations:
>
> *Primary beneficiaries*:
>
> BEATRICE HINDS CARLAND—divorced wife, $13,000.00 (Current value, less $1,000.00 as of date of divorce, September 4, 1964)

> OLIVE KOHLMEYER CARLAND—present wife, Group Insurance over and above $13,000.00
>
> . . .
>
> I further request that the beneficiary designation be effective as of the date of this memo of record.

The above letter and Schedule "A" are not endorsed as recorded by the Company for purposes of a beneficiary designation.

At the time of his death, the value of Mr. Carland's life insurance benefits was $51,480. After some confusion, MetLife paid benefits according to Mr. Carland's last beneficiary designation endorsed as recorded, as follows: $13,000 (plus interest) to respondent, Beatrice Hinds Carland, and the remaining $38,480 (plus interest) to Olive Kohlmeyer Carland.

B. Basis for Federal Jurisdiction in the Court of First Instance

Respondent, Beatrice Hinds Carland, commenced this civil action to establish her right to the full $51,480 (plus interest) in benefits payable upon Mr. Carland's death by filing a summons and petition with the district court of Reno County, Kansas, on November 10, 1988. The other named beneficiary, Olive Kohlmeyer Carland, did not contest the payment. MetLife removed the action to the Federal District Court for the Distric of Kansas, by Removal Peition, dated and filed December 21, 1988. Jurisdiction of the District Court was predicated on 28 U.S.C. §§ 1331 [federal question], in that respondent's complaint "relate[s] to" an employee benefit plan within the meaning of ERISA; 1332 [diversity of citizenship], in that petitioner is a citizen of New York while plaintiff is a citizen of the State of Kansas and the amount in controversy exceeds the sum of $10,000[1]; and 1441 [actions removable generally], in that plaintiff commenced this civil action

[1] That was the required jurisdictional amount at the time.

in the state courts of Kansas, and petitioner removed it, within the time provided by law, to the District Court for the District of Kansas, which embraced the place where the action was pending, based on the original jurisdiction of the United States district courts of actions arising under ERISA and diversity of citizenship.

MetLife moved to dismiss and for summary judgment. Respondent cross-moved for summary judgment. The District Court denied MetLife's motion for summary judgment but granted the cross-motion of respondent, finding that the Kansas settlement agreement controlled the payment of benefits under MetLife's employee welfare plan. Judgment was entered accordingly on December 27, 1989. 727 F. Supp. 592. The Court of Appeals for the Tenth Circuit affirmed the decision of the District Court on the ground that the Kansas settlement agreement was a "qualified domestic relations order" within the meaning of section 206(d)(3)(B)(i) of ERISA [29 U.S.C. § 1056(d)(3)(B)(i)], and judgment was entered to that effect on June 4, 1991. 935 F.2d 1114.

The Tenth Circuit denied MetLife's motion for rehearing and suggestion for rehearing *en banc* by order June 21, 1991. MetLife now seeks review of the Tenth Circuit's ruling.

REASONS FOR GRANTING THE WRIT

Preliminary Statement

ERISA requires fiduciaries to act solely in the interest of plan "participants and beneficiaries," according to plan documents. ERISA § 404(a)(1) [29 U.S.C. § 1104(a)(1)]. The Sixth Circuit has held that a plan participant's designation of beneficiary—a plan document—controls the payment of plan benefits as opposed to a state divorce decree purporting to affect a designated beneficiary's right to receive payment. *McMillan v. Parrott*, 913 F.2d 310, 311-12 (1990) (beneficiary designa-

tion executed by ERISA plan participant who had remarried, which named former wife as beneficiary, prevails over divorce decree purporting to distribute marital property so as to extinguish the right of the designated beneficiary to receive payment). The Eleventh Circuit has similarly held that the "*named* beneficiary"—rather than a former wife seeking benefits on the basis of a state divorce decree—*is* the party "entitled" to payment of benefits under an ERISA group life insurance plan similar to the one here at issue. *Brown v. Connecticut General Life Ins. Co.*, 934 F.2d 1193, 1196 (11th Cir. 1991) (emphasis added).

Contrary to its sister Circuits, the Tenth Circuit held in this case that a property settlement agreement incorporated into a state divorce decree *prevails* over a plan participant's beneficiary designation. 935 F.2d at 1120. It did so by carving out an exception to ERISA's definition of "beneficiary" and by expanding, *sua sponte*, the exception to ERISA pre-emption Congress accorded certain "qualified domestic relations orders"—QDROs—an exception Congress limited to the "*pension* benefit" context. *See* 935 F.2d at 1119-20; *see also* the Retirement Equity Act of 1984 (sometimes hereinafter the "REA") § 104(a), ERISA §§ 206(d)(3)(B)(i), 514(b)(7) [29 U.S.C. §§ 1056(d)(3)(B)(i), 1144(b)(7)]. The benefits here at issue—group life insurance proceeds—are "*welfare* benefits," *not* pension benefits. ERISA § 2(1), 29 U.S.C. § 1002(1) ("welfare plan" means, *inter alia*, a plan to provide benefits in the event of death, *other than* pensions on retirement or death). The statutory exception *Congress* intended—absent the unauthorized expansion made by the Tenth Circuit in this case—therefore does not apply.

As this Court noted in reversing the Tenth Circuit only last year, after making particular reference to the key statutory provisions at issue in this case—29 U.S.C. § 1056(d)(3) [ERISA's QDRO provision]—"[a]s a gen-

eral matter, courts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory text." *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 58 U.S.L.W. 4131, 4134, 110 S. Ct. 680, 687, 107 L. Ed. 2d 782, 795 (1990). (judicially-created exceptions to scheme Congress enacted to safeguard stream of *pension* income under ERISA are inappropriate, even where employee malfeasance or criminal conduct is present); *see also id.* at 4134 n. 18, 110 S. Ct. at 687 n. 18, 107 L. Ed. 2d at 795 n.18 (making reference to section 1056(d)(3) as a legislative exception to ERISA pre-emption). This Court further noted—not for the first time—that "[i]f exceptions to [considered congressional policy choices reflected by the statutory framework of ERISA] are to be made, it is for *Congress* to undertake that task." *Id.* at 4134, 110 S. Ct. at 687, 107 L. Ed. 2d at 795 (emphasis added); *see also Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 753 (1985) (where disuniformity in ERISA's pre-emptive scheme is the inevitable result of the decision of Congress to "save" local insurance laws from pre-emption with respect to some plans but not to others, alteration of that scheme will be left to Congress, not courts). The Tenth Circuit therefore disregarded controlling precedent of this Court when it ignored the fact that Congress had "saved" from ERISA pre-emption only those QDROs which relate to *pension* benefits. It wrongly assumed a legislative role by creating its *own*, new exception: From now on, in the *Tenth* Circuit, QDROs will *also* be "saved" from ERISA pre-emption if they relate to *welfare* benefit plans. That is not what Congress said. That is not what Congress intended.

The Tenth Circuit's assumption of a legislative role fails to reflect the reluctance the judiciary should exercise when interpreting a legislative scheme crafted by Congress with "evident care"—particularly where, as here, the limited scope of the QDRO exception to ERISA pre-emption is clear on its face and *neither* party argued

below that the statute's QDRO provisions determined the outcome of this dispute. *See Guidry*, 58 U.S.L.W. at 4134, 110 S. Ct. at 688, 107 L. Ed. 2d at 795 (even result which engenders understandable natural distaste must be reached where statutory framework controlling payment of ERISA benefits is "clear"); *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 147 (1985) (because ERISA's enforcement provisions were crafted by Congress with "evident care," remedies against ERISA plans should not be expanded by judiciary). The Tenth Circuit, in expanding the scope of the QDRO exception, did so *on its own*, unmistakably usurping the mantle of lawmaker which properly belonged to Congress.

This Court should therefore review—and reverse—the judgment of the Tenth Circuit because:

(i) The split of opinion among the Courts of Appeals concerning the effect of a state divorce decree on an ERISA beneficiary designation should be eliminated so that fiduciaries of welfare benefit plans can uniformly predict the legality of their actions and beneficiaries and participants can be certain of their rights;

(ii) ERISA defines the "beneficiary" to whom a fiduciary owes its duty to provide benefits. By holding that a state domestic relations order determines the "beneficiary" under a welfare benefit plan, the Tenth Circuit adopted a definition of "beneficiary" which conflicts with that given by ERISA. Prior, controlling precedent of this Court requires that any state law—including the divorce decree at issue in this case—which "conflicts with" a substantive provision of ERISA be pre-empted.

(iii) Congress limited the effect of QDROs to the context of pension benefits. By expanding the statutory limitation on QDROs to the context of welfare benefits, the Tenth Circuit improperly assumed the role of Congress and wrongly decided an important federal question which this Court should now reach and reverse.

I. THE CONFLICT AMONG THE CIRCUITS MUST BE ELIMINATED SO THAT FIDUCIARIES OF WELFARE BENEFIT PLANS WILL BE ABLE TO DETERMINE THE LEGALITY OF THEIR ACTS AND PARTICIPANTS AND BENEFICIARIES WILL BE CERTAIN OF THEIR RIGHTS.

ERISA requires fiduciaries to discharge their duties "solely in the interest of [plan] participants and *beneficiaries* . . . [,] in accordance with the documents and instruments governing the plan . . . ." ERISA § 404 (a)(1) [29 U.S.C. § 1104(a)(1)] (emphasis added). Those duties must be discharged "for the exclusive purpose" of "*providing benefits* to participants and their beneficiaries" while at the same time "defraying the reasonable expenses of administering the plan." *Id.* at § 404 (a)(A)(i) [29 U.S.C. § 1104(a)(1)(A)(i) (emphasis added). This Court has repeatedly emphasized that ERISA pre-empts varying *state* laws which, if enforced, would prevent benefit claims from being decided on a uniform, national basis. *See Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 56 (1987). Indeed, ERISA pre-empts sttae laws with such force that even those which are *consistent* with ERISA's substantive requirements are pre-empted. *Mackey v. Lanier Col. Agency & Serv., Inc.*, 486 U.S. 825, 829 (1988). Congress explained the logic of ERISA's pre-emptive force as follows:

> The uniformity of decision which the Act is designed to foster will help administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying state laws.

H.R. Rep. No. 93-533, p. 12 (1973), U.S. Code Cong. & Admin. News 1974, p. 4639 *reprinted in* 2 Senate Committee on Labor and Public Welfare, Legislative History of ERISA 94th Cong., 2d Sess., 2359 (Comm. Print 1976).

ERISA pre-emption of state laws which conflict with substantive provisions of ERISA only makes sense. If

fiduciaries are to be charged with responsibility for a breach of fiduciary duty—*and they are* (*see* ERISA § 409 [29 U.S.C. § 1109])—then they must *know* what their duty is and to whom it is owed. What constitutes performance and breach of fiduciary duty under ERISA poses a federal question of such significance that ERISA not only defines what constitutes a breach of that duty, *id.*, but *specifies* the parties to whom that duty is owed—"participants *and* beneficiaries." *Id.* at § 404(a)(1) [29 U.S.C. § 1104(a)(1)]. It then defines both terms. *Id.* at § 2(7), (8) [29 U.S.C. § 1102(7), (8)]. A "beneficiary," for example, is the person "designated by the participant or by the terms of an employee benefit plan" to receive benefits. *Id.* at § 2(8) [29 U.S.C. § 1002(8)]. Arguably the primary duty *of performance* an ERISA fiduciary owes to a beneficiary is to "*provid*[*e*] *benefits*." *Id.* at § 404(a)(1)(A)(i) [29 U.S.C. § 1104 (a)(1)(A)(i)] (emphasis added).

The plan participant in this case executed and filed with the Company a designation of beneficiary form which specified that respondent, Beatrice Hinds Carland, receive *$13,000* in plan benefits, and Olive Kohlmeyer Carland, his wife at the time of his death, receive all benefits in excess of that amount. That is precisely what both beneficiaries got. The Tenth Circuit, however, found that the *full amount* of benefits payable under the plan was due solely to respondent, Beatrice Hinds Carland. 935 F.2d at 1122. In reaching its erroneous conclusion, the Tenth Circuit wrongly decided at least two important questions of federal law: (1) it found that the statutory definition of "beneficiary" could be ignored, so that a fiduciary no longer knows with certainty the party to whom its duty to "provid[e] benefits" is owed; and (2) it found that fiduciaries have a duty to investigate even "unknow[n]" complicity in a plan participant's efforts to avoid his outside obligations—*id.*—a duty which ERISA nowhere imposes. The contrary and correct decisions of the Sixth and Eleventh Circuits avoid both er-

rors by requiring that performance be determined by a "beneficiary" designation, consistent with ERISA's definition of "beneficiary." *McMillan v. Parrott*, 913 F.2d at 311-12; *Brown v. Connecticut General*, 934 F.2d at 1196.

The difficulties which flow from ignoring the statutory definition of "beneficiary" are obvious. Under the Tenth Circuit's ruling, one of the parties who fits the statutory definition of beneficiary—Olive Kohlmeyer Carland—ends up with an entitlement to nothing. Yet ERISA requires MetLife to act "solely" in her interest as well, not just in the interest of the one of two beneficiaries the Tenth Circuit happened to prefer. ERISA § 404(a)(1) [29 U.S.C. § 1104(a)(1)]. Under the rulings of the Sixth and Eleventh Circuits cited above, such a result would not occur. In *those* Circuits, the beneficiary "*named*" by a beneficiary designation *is* the beneficiary, as ERISA requires, and both respondent *and* Olive Kohlmeyer Carland would therefore be entitled to payment of benefits in the present case, in the amounts specified by the plan participant in his beneficiary designation, as the plan requires. One would scarcely think that an ordinary person—much less a fiduciary—faced with a crystal-clear beneficiary designation, would conclude that a person explicitly designated as entitled to receive all benefits *in excess of $13,000* payable upon the death of the plan participant would somehow be entitled to receive *nothing* when the total amount payable exceeded $51,000! The judgment of the Tenth Circuit makes it impossible for a fiduciary, confronted with a clear, explicit beneficiary designation, to act with ordinary common sense, much less prudence. Unless that judgment is reversed, it will require even indisputably clear beneficiary designations to result in time-consuming, inefficient interpleader or declaratory judgment actions, so that fiduciaries will be able to shield themselves from a charge that they have breached their duty—not a sensible way to "defray[] reasonable expenses of administering the plan." ERISA § 404(a)(1)(A)(ii) [29 U.S.C. § 1104(a)(1)(A)(ii)].

The decision of the Tenth Circuit should be reversed to reconcile it with those of the Sixth and Eleventh Circuits, which require no such imprudent result.

Perhaps even more disturbingly, the scope of the duty the Tenth Circuit has imposed on fiduciaries exceeds that permitted by law. The only documents relevant to the plan participant's divorce which *he* filed with the plan were the February 15, 1974 letter (quoted at page 5, *supra*), and the attached Schedule "A" (set forth at page 5, *supra*). While MetLife eventually had the plan participant's full divorce decree and property settlement in its possession after the plan participant's death, they were supplied by respondent, one of the two designated beneficiaries with an interest in plan benefits. MetLife's plan requires that beneficiary designations be filed by the participant. *See supra*, p. 3. So does ERISA. ERISA § 2(8) [29 U.S.C. § 1002(a)(8)].

Respondent's property settlement purports to require that Ralph C. Carland make respondent the "irrevocable" beneficiary of certain insurance policies, including the one here at issue.[2] The plan participant's February 15,

[2] At a minimum, that decree is ambiguous and should be construed against *its* drafter—respondent, Beatrice Hinds Carland (whose attorney drafted the agreement for both parties' use in divorce proceedings). The agreement purports to require Mr. Carland to designate respondent as the "irrevocable" beneficiary of several policies listed on a Schedule "A," "upon which the premium shall be paid by [Mr. Carland]." The MetLife policy here at issue was a benefit of employment; Mr. Carland did not pay its premium. Hence, it is at least arguable that the mandatory clause of the settlement agreement did not, because it could not, apply to the MetLife policy. Moreover, the Schedule indicates that respondent was to receive the "current value" of the MetLife policy. While that phrase could be interpreted to mean "current value" as of the date of the decree *or* "current value" as of the date of the participant's death, where, as here, the party seeking to use the ambiguous document—respondent—does so to defeat *another* party's interest in the same stake and the party seeking to use it was responsible for its drafting, the ambiguity should be construed against respondent, particularly where the beneficiary designation contains no such am-

1974 letter, on the other hand, said the "decree provides that my Group Life Insurance is designated to go to my divorced wife—Beatrice Hinds Carland—in the amount of the current value, less $1,000.000 *as of the date of the decree*." *See supra*, p. 5 (emphasis added). The beneficiary designation endorsed as recorded by the Company made no reference to the divorce decree and explicitly designated respondent "as beneficiary to receive $13,000 of the Life insurance proceeds" here at issue, with Olive Kohlmeyer Carland to receive "any amount in excess of $13,000." Yet according to the Tenth Circuit, the settlement agreement provided to MetLife by respondent imposed a duty *on MetLife* to determine whether *it* was "knowingly *or unknowingly*" collaborating in the participant's attempt to avoid his legal obligation to his first wife "*under the divorce decree*." 935 F.2d at 1122 (emphasis added). Requiring an ERISA fiduciary to conduct investigations to determine even "unknowing[]" involvement in *another person's* alleged scheme to defeat his obligations is a far cry from requiring the fiduciary to discharge its duties by providing benefits to the "named" beneficiary, as both ERISA and the Sixth and Eleventh Circuits would require!

The Tenth Circuit's ruling is black-letter error. First, the duty *ERISA* imposes is to provide plan benefits in accordance with *plan* "documents and instruments," not divorce decrees. ERISA § 404(a)(1)(D) [29 U.S.C. § 1104(a)(i)(D)]. The party that *had* a duty "under the divorce decree" *was the plan participant*, not MetLife. Indeed, even the Tenth Circuit freely admits that the breach *here* at issue was not a breach committed by the plan, but an alleged attempt by Ralph C. Carland "to avoid *his* legal obligations" to respondent. 935 F.2d at 1122 (emphasis added). Nothing in ERISA indicates or even suggests that fiduciaries should be liable for a *plan*

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biguity but is crystal clear. *See Alcoa Steamship Co. v. United States*, 338 U.S. 421, 424-25 (1949).

participant's failure to complete *his* outside obligations. To the contrary, if Ralph C. Carland failed in his obligations under a divorce decree, then the remedy lies *under that decree*, not against the plan. ERISA expressly and exclusively limits *its* remedial rights to those seeking "to recover benefits due . . . *under the terms of* [*a*] *plan*." ERISA § 502(a)(1)(B) [29 U.S.C. § 1132(a)(1)(B)] (emphasis added). *See also Pilot Life*, 481 U.S. at 54 (ERISA's civil enforcement remedies are intended to be "exclusive").

Second, the Tenth Circuit found that MetLife had a duty to determine if it was collaborating in Mr. Carland's alleged "attempt to avoid his legal obligation" to respondent, even if MetLife's participation was "*unknowing*[]." 935 F.2d at 1122 (emphasis added). Requiring fiduciaries to act even when they have *no knowledge* of a wrong allegedly committed by another completely defeats the care with which the duties imposed on ERISA fiduciaries have been drafted by Congress. *See Pilot Life*, 481 U.S. at 52-56. Fiduciaries are entitled to have their actions directed by uniform, national laws which enable them to determine the legality of their actions, *see id.* at 56, not by the "unknow[n]" actions of others, even though there may be a "natural distaste for the result" necessarily reached in this, or any other, particular case, by firm application of that precept. *Guidry*, 58 U.S.L.W. at 4134, 110 S. Ct. at 688, 107 L. Ed. 2d at 795. The proper remedy for the alleged breach to which the Tenth Circuit refers simply does not lie against the plan, it lies elsewhere.

MetLife's duty was to the "named" beneficiaries—*both* of them. It had no duty to fulfill Mr. Carland's obligations "under [a] divorce decree." As the Sixth Circuit properly noted, participants and beneficiaries are entitled to certainty concerning the rights *ERISA* seeks to provide. *McMillan v. Parrott*, 913 F.2d at 312. The judgment of the Tenth Circuit should therefore be reversed to bring it into line with those of the Sixth and Eleventh

Circuits, which accord with the express language of ERISA and the intent of Congress in enacting it.

II. THE STATE DIVORCE DECREE HERE AT ISSUE CONFLICTS WITH THE SUBSTANTIVE PROVISION OF ERISA WHICH DEFINES "BENEFICIARY"; THE TENTH CIRCUIT THEREFORE WRONGLY DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHEN IT HELD THAT THE STATE DECREE PRE-EMPTED ERISA'S DEFINITION OF "BENEFICIARY"; RATHER, ERISA PRE-EMPTED *IT*.

ERISA defines "beneficiary" as "a person designated *by a participant*, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." ERISA § 2(8) [29 U.S.C. § 1002(8)]. MetLife's Summary Plan Description defines "Your Beneficiary" as "the person *you* [*i.e.*, the plan participant] choose to receive *any* benefit payable because of your death" but specifies that the choice must be made "in writing on an approved form which *you* must file with the Company."[3] It permits participants to "designate more than one beneficiary" and to "specify" the shares each beneficiary will be paid. MetLife is, in turn, required to perform its fiduciary duty by "providing benefits" to beneficiaries, in accordance with plan documents. ERISA § 404(a)(1)(A)(i), (D) [29 U.S.C. § 1104(a)(1)(A)(i), (D)].

In this case, the participant's beneficiary designation—which specified that respondent receive $13,000 in benefits and that Olive Kohlmeyer Carland receive the excess—complied with the terms of MetLife's welfare benefit plan and therefore fits ERISA's definition of "beneficiary." *Id.* at § 2(8) [29 U.S.C. § 1002(8)]. MetLife—which paid $13,000 in benefits to respondent, and the

[3] (Emphasis added). MetLife's plan further states that unless a change of beneficiary is endorsed by the Company on the participant's certificate, "the change shall not take effect." *Supra*, p. 3.

amount in excess of $13,000 to Olive Kohlmeyer Carland —therefore "provid[ed] benefits" to the "beneficiaries" as ERISA requires, in fulfillment of its fiduciary duties. *Id.* at § 404(a)(1) [29 U.S.C. § 1104(a)(1)].

The Tenth Circuit, interpreting a Kansas divorce settlement agreement, nevertheless found that MetLife was required to provide *only* respondent, Beatrice Hinds Carland, with plan benefits, thereby writing the designation of Olive Kohlmeyer Carland out of the plan. 935 F.2d at 1121-22. The Kansas settlement agreement does *not* in fact designate *anyone* as "beneficiary" of *any* insurance policy, much less of the employee welfare benefits here at issue. It merely purports to require Ralph C. Carland to take (or refrain from taking) certain future actions. *Supra*, pp. 4-5. The settlement agreement was not endorsed as recorded by the Company, as the plan requires, nor was it submitted to the Company on a designated form or filed by the plan participant. The terms of the settlement agreement do not and cannot satisfy ERISA's definition of "beneficiary" and therefore cannot determine the party to whom, or the extent to which, MetLife's duty of "providing benefits" is owed.

Where, as here, a federal statute sets forth a "detailed," "comprehensive" administrative scheme, reflecting a thorough balancing of competing interests and a clear choice by Congress as to whose and which rights shall prevail and in which contexts, this Court has unwaveringly found that state laws which "relate to" and "*conflict*[] *with*" Congress's clear choice are preempted under the doctrine of "implied" or "conflict" pre-emption. *Pilot Life*, 481 U.S. at 57; *see also Ingersoll-Rand Co. v. McClendon*, 59 U.S.L.W. 4033, 4036, 111 S. Ct. 478, 485, 486, 112 L. Ed. 2d 474, 486, 488 (1990) (when ERISA protects the right to obtain benefits against wrongdoing, a State law which creates a cause of action purporting to protect the same right conflicts with a substantive provision of ERISA and is pre-empted by "im-

plied" or "conflict" pre-emption); *see also English* v. *General Electric Co.*, 58 U.S.L.W. 4679, 110 S. Ct. 2270, 2279, 110 L. Ed. 2d 65 (1990). By allegedly requiring that MetLife's duty to "provid[e] benefits" be rendered solely to one individual *rather than* to the designated beneficiaries, as ERISA requires, the Kansas settlement agreement at issue in this case "conflict[s] with" a substantive provision of ERISA and is pre-empted under the implied pre-emption doctrine. *See Pilot Life*, 481 U.S. at 57; *Ingersoll-Rand*, 59 U.S.L.W. at 4036, 111 S. Ct. at 485-86, 112 L. Ed. 2d at 487-88. The judgment of the Tenth Circuit—which in effect pre-empted ERISA's definition of "beneficiary" with conflicting State law[4]—therefore wrongfully decided an important question of federal law. This Court should reach that important question and reverse.

III. CONTRARY TO APPLICABLE LAW OF THIS COURT, THE TENTH CIRCUIT WRONGLY AMENDED ERISA BY JUDICIAL FIAT TO EXTEND THE "QDRO" EXCEPTION TO ERISA PREEMPTION TO *"WELFARE BENEFITS"* EVEN THOUGH CONGRESS EXPRESSLY LIMITED THAT EXCEPTION TO *"PENSION* BENEFITS."

Finally, the crux of the Tenth Circuit's opinion is also its most evident problem: The Tenth Circuit found that the Kansas settlement agreement was a "qualified domestic relations order" within the meaning of ERISA. 935 F.2d at 1119-20. It wasn't, and it can't be—not until the statute is amended *by Congress.*

QDROs *"within* the meaning of ERISA" are extremely limited. *See* ERISA § 514(b)(7) (as amended by REA § 104(b)) [29 U.S.C. § 1144(b)(7)]. They are a statutory exception to ERISA's prohibition against alienation

[4] "[] 'State law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.' ERISA § 514(c)(1) [29 U.S.C. § 1144(c)(1)].

of *pension* benefits, known as ERISA's "spendthrift provisions." *Id.* at § 206(d)(1), (d)(3)(A) (as amended by REA § 104(a)) [29 U.S.C. § 1056(d)(1), (d)(3)(A); *see also* 1984 U.S. Code Cong. & Admin. News 2547, 2459 (discussing the "spendthrift provisions"). ERISA's spendthrift provisions apply *only* to "*pension* benefits." *Id.* The benefits here at issue are "*welfare* benefits," *not* "*pension* benefits." As such, neither QDROs, nor the spendthrift provisions to which they are an exception, apply. *Massachusetts Mut. Life v. Russell*, 473 U.S. at 141-42 (a court cannot construe a phrase from ERISA by divorcing it from its context to construct an entirely new class of relief which ERISA restricts to other contexts). The decision of Congress to limit QDROs to the pension plan context may result in differences in the extent to which certain types of employee benefit plans are affected by ERISA pre-emption, but arguments concerning the wisdom of *those* choices "*must* be directed *at* Congress," not the courts. *Metropolitan Life v. Massachusetts*, 471 U.S. at 747 (emphasis added) (noting that Congress chose to have ERISA pre-emption affect self-funded and insured employee benefit plans differently and holding that courts cannot alter that difference).

ERISA pre-empts all State laws which "relate to" employee benefit plans except those laws expressly "saved" from ERISA's broad pre-emptive sweep. *See* ERISA § 514(a), (b) [29 U.S.C. § 1144(a), (b)]; *see also FMC Corp. v. Holliday*, 59 U.S.L.W. 4009, 4011, 111 S. Ct. 403, 407, 112 L. Ed. 2d 356, 364 (1990) (ERISA's pre-emption clause is "conspicuous for its breadth"); *Pilot Life*, 481 U.S. at 47-45. Clauses which "save" state laws from ERISA pre-emption are given a narrow construction. *FMC Corp. v. Holliday*, 59 U.S.L.W. at 4012, 111 S. Ct. at 409-10, 112 L. Ed. 2d at 367-68. ERISA "saves" from ERISA preemption only those QDROs "*within* the meaning of section 1056(d)(3)(B)(i) of this title." ERISA § 514(b)(7) (as amended by REA § 104(b)) [29 U.S.C. § 1144(b)(7)] (emphasis added). Section 1056

(d)(3)(B)(i) applies only to "*pension* benefits." *Id.* at § 206(d)(3) (as amended by REA § 104(a)) [29 U.S.C. § 1056(d)(3)] (emphasis added). QDROs which "relate to" *welfare* benefits *are* necessarily pre-empted, otherwise the "saving" of QDROs which relate to "pension benefits" would make no sense. *See id.* at § 514(a) [29 U.S.C. § 1144(a)]. The judgment of the Tenth Circuit, which reached a contrary result, therefore fails to comply not only with the plain language of ERISA but also with controlling precedent of this Court, and must be rejected.

ERISA draws a sharp distinction between "*welfare* benefit plans" and "*pension* benefit plans." ERISA § 2(1), (2) [29 U.S.C. § 1002(1)(2)] (emphasis added). Indeed, "*welfare* benefit plans" are expressly defined as those which provide, among other things, benefits payable upon death "*other than pensions on retirement or death*, and insurance to provide such *pensions*." *Id.* at § 2(1) [29 U.S.C. § 1002(1)] (emphasis added). The first hint that something is wrong with the Tenth Circuit's decision comes from the preamble of the law which *added* section 1056(d)(3)(B)(i) to Title 29 of the United States Code. That preamble says:

> An Act to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve the delivery of *retirement benefits* and provide for greater equity under private *pension* plans for workers and their spouses and dependents by taking into account changes in work patterns, the status of marriage as an economic partnership, and the substantial contribution to that partnership of spouses who work both in and outside the home, and for other purposes.

Retirement Equity Act of 1984 (REA), Pub. L. No. 98-397, 1984 U.S. Code Cong. & Admin. News (98 Stat.) 1426 (emphasis added). Indeed, REA's exclusive focus is on *pension* benefits, not "welfare" benefits.[5] QDROS

[5] The legislative history of QDROs, set forth at 1984 U.S. Code Cong. & Admin. News 2547 *et seq.*, repeatedly refers *only* to *pension*

were added to ERISA by REA. It therefore stands to reason, even without more, that a QDRO "*within*" the meaning of section 1056(d)(3)(B)(i) *must* relate to "*pension* benefits," not "*welfare* benefits." Further exploration of the statutory framework in which section 1056(d)(3)(B)(i) appears makes that conclusion indisputable.

Subparagraph (B) of 29 U.S.C. § 1056(d)(3) indicates that the QDRO exception applies only for the "purposes of *this* paragraph . . . ." (Emphasis added). *That* paragraph has only *one* purpose: to prevent the assignment or alienation of *pension* benefits, unless a complying QDRO is present. Subdivision (i)(I) of § 1056(d)(3)(B) further specifies that a QDRO is used for the purpose of determining the rights of "an alternate payee." "Alternate payee" is a term of art under ERISA used only in the context of *pension* benefits. *See* ERISA § 206(d)(3)(K) (as amended by REA § 104(a)) [29 U.S.C. § 1056(d)(3)(K)]; *see also, e.g.*, ERISA § 101(d)(1) (as amended by the Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203 § 9304(d), 101 Stat. 1330-342 (1987)) [29 U.S.C. § 1021(d)(1)] (requiring notification to "alternate payee *as defined in section 1056(d)(3)(K)* of this title" (emphasis added)). The phrase "alternate payee" has *no* meaning in the context of *welfare* benefits.

Moreover, subparagraph (L) of 29 U.S.C. § 1056(d)(3) explicitly states that "[*t*]*his* paragraph [*i.e.*, paragraph (d), containing the QDRO exception] shall *not* apply to any plan to which paragraph (1) does *not* apply." (Emphasis added). Paragraph (1), in turn, expressly states that *it* applies *only* to "*pension* plan[s] . . . ." ERISA § 206(d)(1) [29 U.S.C. § 1056(d)(1)] (emphasis added). Hence, *neither* paragraph applies to

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benefits, never to *welfare* benefits, further indicating that Congress intended the QDRO exception to apply exclusively to pension benefits.

welfare plans. Finally—and *conclusively*—section 1051 of 29 U.S.C. (ERISA § 201) further specifies that "[t]his part" [i.e., Part 2 of ERISA's Subtitle B—"Participation and Vesting," which includes the QDRO exception] shall [*not*] apply to . . . *employee welfare benefit plan*[*s*] . . ."! (Emphasis added). Therefore, when the Tenth Circuit *applied* the QDRO exception to MetLife's *welfare* benefit plan, it violated the express commands of Congress.

It is beyond question that the governing statutory framework chosen by Congress explicitly limits the application of QDROs to *pension* benefits and prohibits their application to benefits payable under *welfare* benefit plans (unless, of course, the terms of *the plan* contain provisions for recognizing divorce decrees as beneficiary designations; *see* ERISA § 2(8) [29 U.S.C. § 1002(8)]). *Id.* The Tenth Circuit's *extension* of QDROs to welfare benefit plans therefore wrongly amended, by judicial fiat, a complex statutory framework crafted by Congress with evident care. *Massachusetts Mut. Life v. Russell*, 473 U.S. at 147. It was not the place of the Tenth Circuit to do so. *Metropolitan Life v. Massachusetts*, 471 U.S. at 747. Prior precedent of *this* Court requires that tampering with ERISA's statutory framework "*must*" be done by Congress, not the courts. *Id.* (emphasis added).

The wisdom of that command is obvious. The spendthrift provisions which include the QDRO exception to ERISA pre-emption also provide a detailed framework for establishing *which* domestic relations orders *are* "qualified" to require the "alternate" payment of *pension* benefits, and *when*. ERISA § 206(d)(3)(C),(D) (as amended by REA § 104(a)) [29 U.S.C. § 1056(d)(3)(C), (D)]. Each *pension* plan is required to establish *written procedures* to protect the plan, the participant, other beneficiaries and the fiduciary itself against the wrongful or duplicative pension payments that might occur through blind enforcement of *un*qualified domestic relations orders. *See Id.* at § 206(d)(3)(G)(i)(II) [29

U.S.C. § 1056(d)(3)(G)(i)(II)]. *Prior notice* to the plan participant and other "alternate payee[s]" is required, thereby further protecting against claims made at a time when the intention of the relevant parties can no longer be determined because one of them has died or is incapacitated. *Id.* at § 206(d)(3)(G)(i)(I) [29 U.S.C. § 1056(d)(3)(G)(i)(I)]. Moreover, to the extent that a fiduciary discharges its duties to a *pension* plan by making payment in accordance with the spendthrift's QDRO provisions, its obligations are deemed to be *properly discharged*. *Id.* at § 206(d)(3)(I), [29 U.S.C. § 1056(d)(3)(I)].

ERISA's spendthrift provisions, and the protections they include, apply only to *pension* plans. *Id.*, at § 206(d)(1) [29 U.S.C. § 1059(d)(1)]. *Welfare* benefit plans have no similar built-in protections. Indeed, in the present case, the divorce decree on which the Tenth Circuit has relied was not filed by the plan participant, was not in MetLife's possession until *after* the plan participant's death, was not enforced pursuant to any written plan procedure, and does not in fact designate respondent as the beneficiary of anything. The parties are before this Court precisely *because* the QDRO here at issue is *not* a QDRO "within the meaning of section 1056(d)(3)(B)(i)" of Title 29. If it *were*, the questions raised by these proceedings would be entirely different: *viz.*, did the "pension plan" establish written procedures which provided for the payment of benefits to an "alternate payee," pursuant to an order "determined" by the administrator to be a "qualified domestic relations order"? In this case, of course, the answers are "no," "no," and again "no," because MetLife's welfare benefit plan is not a *pension* plan to which the statutory framework for determining if a domestic relations order is "qualified" applies.

Every indication in the governing statutory framework points to the same conclusion: Congress intended QDROs to be limited to pension benefits. Only the impermissible

judicial amendment of ERISA by the Tenth Circuit has made it otherwise. As this Court previously told the Tenth Circuit, it should have been "loath" to alter the statutory scheme Congress intended. *Guidry*, 58 U.S.L.W. at 4134, 110 S. Ct. at 687, 107 L. Ed. 2d at 795. Now it appears that the Tenth Circuit must be told again. This Court should therefore grant MetLife's petition and reverse the erroneous judgment of the Tenth Circuit.

CONCLUSION

The petition for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit should be granted. The petition is needed to rectify a difference among the Circuits regarding which should prevail: a valid ERISA beneficiary designation or a state divorce decree which purports to require a conflicting beneficiary designation. Without that rectification, ERISA fiduciaries will be unable to determine to whom they owe the duty of "providing benefits" and participants and beneficiaries will be unsure of their rights under ERISA welfare benefit plans. Rectification of the difference among the circuits is required to restore the certainty which the decision of the Tenth Circuit has destroyed.

Moreover, the Tenth Circuit wrongly disregarded binding precedent of this Court when it, *sua sponte*, amended section 1056(d)(3)(B)(i) of Title 29 of the United States Code to provide that it applies to "*welfare* benefit plans." In fact, that section is limited by the face of ERISA to "*pension* benefit plans." Because ERISA was crafted by Congress with evident care, the Tenth Circuit was required to exercise judicial restraint in altering it—a restraint it failed to practice. Instead, the Tenth Circuit, in violation of its proper function, engaged in lawmaking, a governmental function reserved to the Legislature. This petition therefore raises important questions of federal law which this Court should reach and reverse, in MetLife's favor.

WHEREFORE, it is respectfully requested that MetLife's petition be granted in its entirety or that this Court grant such other and further relief as may seem just and proper.

Respectfully submitted,

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Dated: New York, NY
September 19, 1991

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 90-3014

BEATRICE HINDS CARLAND,
Plaintiff-Appellee,
v.
METROPOLITAN LIFE INSURANCE COMPANY,
Defendant-Appellant.

Appeal from the United States District Court
for the District of Kansas
(D.C. No. 88-1713-K)

[Filed Jun. 4, 1991]

Alvin Pasternak (William J. Toppeta, New York, New York, with him on the briefs), New York, New York, for the Defendant-Appellant.

Andrew L. Oswald, Martindell, Swearer, Cabbage, Ricksecker & Hertach, Hutchinson, Kansas, for the Plaintiff-Appellee.

Before TACHA and BALDOCK, Circuit Judges, and KANE, District Judge.*

TACHA, Circuit Judge.

Defendant-appellant Metropolitan Life Insurance Company appeals a grant of summary judgment in favor of

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* The Honorable John L. Kane, Jr., Senior United States District Judge for the District of Colorado, sitting by designation.

plaintiff-appellee Beatrice Carland in an action for wrongful denial of insurance proceeds. On appeal, Metropolitan Life argues the district court erred by finding: (1) the determination of beneficiaries under a life insurance policy is subject to de novo review, (2) the divorce decree intended Beatrice Carland to be the irrevocable and sole primary beneficiary of the entire proceeds of the group policy, and (3) payment of life insurance benefits according to the company's beneficiary designation forms fails to satisfy the plan administrator's obligation under ERISA. Metropolitan Life also argues the district court improperly considered the affidavit of J. Richards Hunter, Beatrice Carland's divorce attorney, in determining the intent of the parties to the divorce decree. We exercise jurisdiction under 28 U.S.C. § 1291 and affirm.

I. FACTS

Ralph Carland, an employee of Metropolitan Life, was a holder of a group life insurance policy, Metropolitan Group Policy No. 50 G.L., certificate number 134181. The group policy is part of an employee welfare benefit plan governed by the Employment Retirement Income Security Act (ERISA or Act), 29 U.S.C. §§ 1001 *et seq.* During Ralph Carland's marriage to Beatrice Carland, he designated her the primary beneficiary of this policy's proceeds.

On September 4, 1964, Ralph and Beatrice Carland were divorced. At that time, Beatrice Carland was a homemaker and Ralph Carland was employed by Metropolitan Life as district manager of the Hutchinson, Kansas district office. Following the divorce, Ralph Carland was employed in a supervisory position at the New York City office of Metropolitan Life. Sometime after divorcing Beatrice Carland, Ralph Carland married Olive Kohlmeyer Carland.

Ralph and Beatrice Carland negotiated a property settlement agreement that was incorporated into a divorce decree entered by the Reno County District Court in Kansas. The decree provides in pertinent part:

> The court further finds that the parties hereto have entered into an agreement which contains the mutual covenants of the parties hereto with regard to that for which they would jointly ask the Court to decree regarding child custody and visitation, child support, alimony, property division and expenses. An executed copy of said agreement is attached hereto and made a part hereof.
>
> . . . .
>
> [I]n accordance with said agreement Defendant is ordered to pay the premiums on, and to make irrevocable designation of Plaintiffs as the sole primary beneficiary under and of, the policies of insurance on the life of Defendant listed in Schedule "A" appended to the Settlement Agreement to which reference has been made herein.

Schedule A of the property settlement agreement lists specific life insurance policies that Ralph Carland agreed to designate Beatrice Cariand the sole primary beneficiary of and the face value of those policies:

SCHEDULE "A"

Policies of Insurance on Life of Ralph C. Carland

Policy No.	Company	Face Amount
17 083 285A	Metropolitan Life Ins. Co.	$ 5,000.00
22 127 306A	Metropolitan Life Ins. Co.	10,000.00
21 300 423	New York Life Ins. Co.	5,000.00
21 372 985	New York Life Ins. Co.	5,000.00
Ctf. 134181	Metropolitan Group Ins.	Current value, less 1000.00

On February 15, 1974, Ralph Carland sent a letter to Metropolitan Life. The letter states:

> Please note that the attached schedule is from my divorce decree of September 4, 1964, Case 13926. The decree provides that my Group Life Insurance is designated to go to my divorced wife—Beatrice Hinds Carland—in the amount of the current value, less $1,000.00 as of the date of the decree.

Therefore, I direct the Company to make the following Beneficiary designations:

Primary beneficiaries:

BEATRICE HINDS CARLAND—divorced wife, $13,000.00 (Current value, less $1,000 as of date of divorce, September 4, 1964)

OLIVE KOHLMEYER CARLAND—present wife, Group Insurance over and above $13,000.00

Secondary Beneficiaries:

RALPH C. CARLAND, JR. and CHRISTOPHER BRIEN CARLAND (Share and share alike or all to survivor)

I further request that the beneficiary designation be effective as of the date of this memo of record.

In March 1974, Ralph Carland completed two change of beneficiary forms for the group policy. One names Beatrice Carland primary beneficiary for $13,000 and Olive Carland primary beneficiary for the amount in excess of $13,000. The other form designates Olive Carland sole primary beneficiary for all proceeds of the group policy. It is unclear which form was completed last.

Ralph Carland died on April 9, 1987. Within three days, the Tulsa, Oklahoma office of Metropolitan Life received a letter from Beatrice Carland notifying the company of her claim to the policy proceeds. The letter enclosed a copy of the relevant portions of the decree. The Tulsa office sent Beatrice Carland claim application forms and requested a death certificate for Ralph Carland.

While waiting for the death certificate to arrive, Beatrice Carland spoke with a Metropolitan Life employee in the company's office in Wichita who assured her she was sole primary beneficiary of the group policy.

However, Beatrice Carland was informed later that the company intended to pay the proceeds to another individual. Although Beatrice Carland supplied company officials with documentation supporting her claim, Metropolitan Life paid Olive Carland the entire proceeds of the group policy. Metropolitan Life later informed Olive Carland of Beatrice Carland's claims to the proceeds of the group policy. Olive Carland agreed to resolve the issue of the conflicting beneficiary designation forms by returning $13,000 of the proceeds. Metropolitan Life then paid Beatrice Carland this amount plus interest.

Beatrice Carland filed suit against Metropolitan Life in Reno County District Court for wrongful denial of insurance proceeds. Metropolitan Life removed the action to federal district court pursuant to 28 U.S.C. § 1441. The insurance company filed a motion to dismiss or for summary judgment, arguing any obligation under ERISA had been satisfied by payment of the proceeds to the beneficiaries of record. Beatrice Carland responded she stated a claim under ERISA and moved for summary judgment. The district court granted Beatrice Carland's motion for summary judgment. *Carland v. Metropolitan Life Ins. Co.*, 727 F. Supp. 592 (D. Kan. 1989).

II. DISCUSSION

A. Standard of Review

We review a summary judgment under the same standard a district court applies pursuant to Rule 56 of the Federal Rules of Civil Procedure. *Osgood v. State Farm Mut. Auto. Ins. Co.*, 848 F.2d 141, 143 (10th Cir. 1988). In determining whether a genuine issue of material fact remains, we view all facts and inferences in the light most favorable to the nonmoving party. *Burnette v. Dow Chemical Co.*, 849 F.2d 1269, 1273 (10th Cir. 1988). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file,

together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P 56(c). The substantive law regarding a claim identifies which facts are material in a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Metropolitan Life contends we only should review a beneficiary determination for an abuse of discretion by the plan administrator. In *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989), the Supreme Court held a denial of benefits challenged under ERISA is reviewed under a de novo standard unless the benefit plan gives the administrator discretionary authority to construe the terms of the plan. Here, the group policy does not grant Metropolitan Life such discretion. Rather, the plan requires the company to pay proceeds to the beneficiary of record. We find no reason to apply an abuse of discretion standard in this action.

B. ERISA

1. Preemption in General

Both parties agree this case is governed by ERISA. The ERISA preemption clause provides in pertinent part: "[T]he provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan . . . ." 29 U.S.C. § 1144(a). This clause establishes a broad area of exclusively federal concern preempting state law claims that "relate to" an employee benefit plan. *See FMC Corp. v. Holliday*, 111 S. Ct. 403, 407 (1990). The Supreme Court has stated the preemption clause is "deliberately expansive" and should be given its "broad commonsense meaning." *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 46-47 (1987) (citing *Shaw v. Delta Air Lines*, 463 U.S. 85, 97-98 (1983));

see also Settles v. Golden Rule Ins. Co., 927 F.2d 505, 508 (10th Cir. 1991). The Supreme Court also has held state common law tort and contract claims for improper processing of benefits claims are preempted by ERISA. *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 62-63 (1987); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 45, 57 (1987). We therefore must determine whether Beatrice Carland's state law claim for wrongful denial of insurance proceeds is preempted and converts to a removable federal ERISA claim over which we may exercise jurisdiction.

2. Conversion of State Law Claims

In *Metropolitan Life*, the Supreme Court explained the relation between ERISA preemption and removal jurisdiction. The Court pointed out that federal preemption is ordinarily a defense to state law claims. *Metropolitan Life*, 481 U.S. at 63. As a defense, preemption will not appear on the face of a well-pleaded complaint and therefore will not authorize removal to federal court. *Id.*; *see Gully v. First National Bank*, 299 U.S. 109 (1936). The Court noted where Congress has completely preempted a particular area of the law, however, any civil complaint raising a claim in that area is necessarily federal in character. *Metropolitan Life*, 481 U.S. at 63; *see also, e.g., Avco Corp. v. Aero Lodge No. 735, Int'l Ass'n of Machinists & Aerospace Workers*, 390 U.S. 557 (1968) (claims preempted by section 301 of the LMRA are removable federal claims). A state law claim will convert to a federal claim only if the claim is preempted by ERISA and within the scope of ERISA's civil enforcement provisions. *Metropolitan Life*, 481 U.S. at 64.

The civil enforcement provision of ERISA states: "A civil action may be brought . . . by a . . . beneficiary . . . to recover benefits due . . . under the terms of [the] plan." 29 U.S.C. § 1132(a). A "beneficiary" is defined as "a person designated by a participant . . . who is or may become entitled to a benefit" under the plan. *Id.*

§ 1002(2)(B)(8). Beatrice Carland is a beneficiary within the statutory definition because Ralph Carland designated her the sole primary beneficiary for the group policy during their marriage. As a designated beneficiary, she may be entitled to benefits under that policy. Additionally, Beatrice Carland's claim for wrongful denial of insurance proceeds from an ERISA welfare benefit plan clearly is "related to" that plan and, therefore, is preempted. Because Beatrice Carland's state claim to recover benefits under the group policy falls within the scope of ERISA's civil enforcement provision and is preempted by ERISA, the claim against Metropolitan Life is converted to an ERISA claim over which we have removal jurisdiction.

3. A Statutory Exception for Preemption of Divorce Decrees

Metropolitan Life argues ERISA's preemptive powers should nullify any effect the state divorce decree has on the company's obligation to pay the policy proceeds. In determining whether ERISA preempts the divorce decree, we look to congressional intent, "whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977) (quoted in *Delta Air Lines*, 463 U.S. at 95). We begin with the statutory language, assuming the ordinary meaning of that language expresses Congress's intent. *See Holliday*, 111 S. Ct. at 407 (citing *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985)).

The statute defines "State law" subject to preemption to include "all laws, decisions, rules, regulations, or other State action having the effect of law, of any State." 29 U.S.C. § 1144(a). Although this language apparently would include claims based on divorce decrees issued by state courts, subsection (b)(7) explains the preemption clause "shall not apply to qualified domestic relations

orders [QDROs] (within the meaning of section 1056(d)(3)(B)(i) of this title)." *Id.* § 1144(b)(7).

According to section 1056(d), a court order relating to spousal property rights is a QDRO if it "creates or recognizes the existence of an alternate payee's right to . . . receive all or a portion of the benefits payable" under a plan. *Id.* § 1056(d)(3)(B)(i)(I). To qualify under the statute, a court order must include: (1) the name of the participant and the name and mailing address of an alternate payee covered by the order, (2) the amount or percentage of benefits payable to an alternate payee or a manner of determining the amount or percentage, (3) the number of payments or period affected by the order, and (4) the plan to which the order applies. *Id.* § 1056(d)(3)(B)(i)(II), (C). The statute also includes three general prohibitions for a QDRO. The order may not require a plan to provide: (1) any type of benefit or option not provided under the plan, (2) increased benefits, or (3) payment of benefits to an alternate payee required to be paid to another alternate payee under a previous QDRO. *Id.* § 1056(d)(3)(B)(i)(II), (D).

Section 1056(d)(3), which lists the requirements for a QDRO, exempts qualifying domestic relations orders from the general anti-alienation requirement in section 1056(d) applicable to pension benefit plans. 29 U.S.C. § 1056(d)(3). Because the reference in the preemption clause to section 1056(d)(3)(B)(i) does not restrict application of the statutory preemption exception to pension benefit plans, however, we interpret the exception to apply to all qualifying domestic relation orders whether they involve a pension or welfare benefit plan. Taken together, sections 1144(b)(7) and 1056(d)(3)(B)(i) of the statute exempt divorce decrees meeting the statutory requirements from ERISA preemption. The general goals of ERISA are served by this interpretation of the preemption exception because a divorce decree meeting the requirements contained in section 1056(d) provides all

the necessary information to determine the identity of a beneficiary without creating unreasonable administrative burdens for the plan administrator.

Here, the domestic relations order recognizes Beatrice Carland's right to receive policy benefits. The decree denotes the name of the participant, Ralph Carland, and the beneficiary, Beatrice Carland, and provides the names and addresses of her attorneys. Schedule A specifies that the decree affects the group policy, certificate number 134181. The schedule states Beatrice Carland should receive the "current value" of the policy, less one thousand dollars. Further references to Beatrice Carland as the "irrevocable" and "sole primary beneficiary" indicate her entitlement is based on the value of the group policy at the time of Ralph Carland's death. Because the divorce decree includes all the information required by the statute and does not involve any of the prohibitions, the divorce decree entitling Beatrice Carland to the group policy proceeds, less one thousand dollars, is not preempted by ERISA.

Metropolitan Life argues an issue of fact remains regarding the amount of benefits Beatrice Carland was intended to receive under the settlement agreement. Construction of the provisions of a settlement agreement, like any other question of contract construction, is a question of law. *See Florom v. Elliott Mfg.*, 867 F.2d 570, 575 (10th Cir. 1989); *Resort Car Rental Sys., Inc. v. Chuck Ruwart Chevrolet, Inc.*, 519 F.2d 317, 320 (10th Cir. 1975). Only when ambiguity exists on the face of a contract is a question of fact presented. *State Farm Mut. Auto. Ins. Co. v. Fernandez*, 767 F.2d 1299, 1301 (9th Cir. 1985). The presence of ambiguity in a contract term must be determined as a matter of law. *Royal Cup, Inc. v. Jenkins Coffee Serv., Inc.*, 898 F.2d 1514, 1523 (11th Cir. 1990); *Fernandez*, 767 F.2d at 1301. An ambiguous contract term is one "reasonably susceptible to more than one interpretation." *Fabrica Italiana Lovor-*

azione Materie Organiche, S.A.S. v. Kaiser Aluminum & Chem. Corp., 684 F.2d 776, 780 (11th Cir. 1982); *see Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1361 (11th Cir. 1988), *cert. denied*, 488 U.S. 1041 (1989); *see also* J. Calamari & J. Perillo, Contracts §§ 3-14 (3d ed. 1987).

Metropolitan Life concedes the company was under no obligation to pay the proceeds until Ralph Garland's death. Therefore, we reject as unreasonable the company's suggestion that Ralph Carland intended "current value" to signify some hypothetical value of the group policy at the time of divorce. Likewise, we dismiss the possibility that Ralph Carland made an illusory promise by agreeing to designate Beatrice Carland the sole primary beneficiary of a policy he should have known, as an insurance man, had a zero value at the time of the divorce. In light of language describing Beatrice Carland as the "irrevocable" and "sole primary" beneficiary under the policies in Schedule A, the terms of the settlement agreement are not ambiguous. The term "current value" has only one meaning in this context—the value of the policy at the time of Ralph Carland's death. Because our construction of "current value" is a legal determination not involving extrinsic evidence, the district court's consideration of the affidavit of Beatrice Carland's divorce attorney is immaterial.

4. Metropolitan's Obligation Under ERISA and the Plan

Metropolitan Life contends payment of life insurance benefits according to the company's beneficiary designation forms satisfies any affirmative duty imposed by ERISA or the plan. The fiduciary provision of ERISA provides: "[A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . in accordance with the documents and instruments governing the plan insofar as

such documents and instruments are consistent with the provisions of [ERISA]." 29 U.S.C. § 1104. Section VII of the group policy states: "Upon receipt by the Insurance Company of satisfactory proof, in writing, that any Employee insured hereunder shall have died, the Insurance Company shall pay . . . to the Beneficiary of record of Employee, the amount of Life Insurance . . . in force hereunder . . . ." Further, section VI(D) of the policy requires the insured, Ralph Carland, and his employer, Metropolitan Life, to furnish "all information . . . which the [Metropolitan Life] Insurance Company may reasonably require . . . with regard to the happenings of any event . . . affecting or relating to the Life Insurance of any Employee."

Ralph Carland apparently complied with his policy obligation by sending a copy of the divorce decree to Metropolitan Life when he attempted to change beneficiaries in March 1974. Metropolitan Life also received notice of Beatrice Carland's claim under the decree when she sent the letter in April 1987 to the Tulsa office and enclosed a copy of the relevant provisions and later sent the company a certified copy of the decree. Because Metropolitan Life received the divorce decree and was on notice, the company had a duty to consider that decree as part of "the record" in determining the beneficiary of record under this ERISA-governed plan. Metropolitan Life's duty to pay the appropriate beneficiary, taking into account the qualifying divorce decree, is part of the fiduciary responsibilities Congress referred to in section 1104 of the statute. *See* 29 U.S.C. § 1104.

Metropolitan Life argues ERISA requires a plan administrator to look only at the plan documents to determine the beneficiary of a welfare benefit plan. In summarizing section 1104 as simply requiring fiduciaries to "discharge [their] duties with respect to a plan . . . in accordance with the documents and instruments governing the plan," Metropolitan Life fails to mention Congress

included the phrase "insofar as the instruments are consistent with the provisions of this subchapter or subchapter III of this chapter." *See* 29 U.S.C. § 1104(1)(D). Blindly paying the proceeds as specified in the insurance company's beneficiary designation forms would be inconsistent with the statutory preemption exception that recognizes the validity of domestic relations orders affecting beneficiary designations. *See* 29 U.S.C. § 1056. Because a divorce decree satisfying the statutory requirements becomes part of the record when a plan receives notice, a plan administrator complying with ERISA must take that decree into account in making a beneficiary determination.

Metropolitan Life cites a recent Sixth Circuit decision, *McMillan v. Parrott*, 913 F.2d 310, 312 (6th Cir. 1990), as support for its decision to disregard the divorce decree in determining the beneficiary of record. *Parrott* involved the issue whether a broad waiver of "any and all claims" against the other spouse in a divorce decree nullifies an individual's pre-divorce designation of an ex-spouse as beneficiary. The court in *Parrott* held the designation of a beneficiary on file with the insurance company controls in determining what effect a divorce decree may have on a beneficiary designation. *Id.* at 312.

Although the issues involved in the two cases differ, our holding resolves several concerns the Sixth Circuit raised in *Parrott*. One reason for the court's holding in *Parrott* was that the decree provided for a general waiver of claims and did not "specifically refer to the spouse's rights as beneficiary" in the ERISA plan. *Id.* ERISA requires specific information in a divorce decree for that decree to escape preemption and qualify as a beneficiary designation for an ERISA-governed plan. Based on the statutory requirements in section 1056, a plan administrator can determine with certainty whether language in a divorce decree affects the payment of benefits. Similar to the *Parrott* decision, our holding allows plan administra-

tors to rely on designations on file with the company. However, when a plan has notice of a divorce decree satisfying the requirements of section 1056(d)(3)(B)(i), the administrator may not contravene Congress's intent by ignoring that decree in favor of other documents on file. We further agree with the Sixth Circuit that Congress intended ERISA plans to be "uniform in their interpretation and simple in their application"—a goal that is well-served when all plan administrators honor divorce decrees meeting the statutory requirements.

Metropolitan Life argues any duty beyond payment of proceeds to the individual listed on the most recent beneficiary designation forms imposes a burdensome obligation on plan administrators that conflicts with their fiduciary responsibility to preserve and protect the assets of the plan. However, ERISA already requires an administrator of a pension benefit plan to investigate the marital history of a participant and determine whether a domestic relations order exists that could affect the distribution of benefits. 29 U.S.C. § 1056; *see Fox Valley*, 897 F.2d at 282. Our holding based on the statute and plan obligations only requires that administrators of welfare benefit plans also consider the marital history of a participant when paying benefits. Further, the statutory requirement a plan administrator have notice of the beneficiary's name, address, and the amount or percentage of a particular benefit plan ensures the decree provides an administrator with information needed to process a claim efficiently so that assets are preserved and beneficiaries' interests are served.

Metropolitan Life's conduct relating to Beatrice Carland disregarded the heart of the fiduciary provision requiring plan administrators to discharge their duties "solely in the interests of the participants and beneficiaries." Metropolitan Life effectively ignored the interests of a beneficiary by participating, knowingly or unknowingly, in Ralph Carland's attempt to avoid his legal

obligation to Beatrice Carland under the divorce decree. Because Metropolitan Life has not shown any genuine dispute of material fact remains, we hold as a matter of law Beatrice Carland is entitled to the entire proceeds of the group policy, less one thousand dollars, as the divorce decree requires. We AFFIRM.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

No. 88-1713-K

BEATRICE HINDS CARLAND,
Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE COMPANY,
Defendant.

MEMORANDUM AND ORDER

[Filed Dec. 27, 1989]

This matter is before the court on motion by the defendant, Metropolitan Life Insurance Co. (Metropolitan), to dismiss or for summary judgment. In addition, plaintiff Beatrice Hinds Carland, in her response, seeks summary judgment.

The plaintiff originally filed this action in Reno County District Court, seeking to recover proceeds from a life insurance policy on her former husband, Ralph Carland. In the state court petition, the plaintiff alleged that a divorce decree between her and her former husband required that she was to be the sole beneficiary of the policy in question. Metropolitan then sought removal of the case to his court under 26 U.S.C. § 1441(a) & (b) (diversity and federal question jurisdiction). Metropolitan then filed a motion to dismiss or for summary judgment, alleging that it has already properly paid out the full proceeds of the policy according to the terms of the divorce decree and to a change of beneficiary form executed by the decedent husband. In response, the plaintiff asserts she does state a claim under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq.*, and that she is entitled to summary judgment thereunder.

The court finds herein that the plaintiff does state a cause of action under ERISA. In addition, since none of the facts alleged by the plaintiff in her summary judgment motion are controverted by the defendant, they are deemed admitted under D. Kan. Rule 206(c). As a result, the court finds herein that the plaintiff is entitled to judgment as a matter of law.

Findings of Facts

The following are the facts set forth in the parties' summary judgment motions and they are not controverted by the party in opposition thereto.

Ralph C. Carland, as an eligible employee of Metropolitan, was covered for group life insurance under Metropolitan Group Policy No. 50 G.L., Certificate No. 134181 (group policy). The group policy is part of an employee welfare benefit plan governed by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001 *et seq.*

Mr. Carland and plaintiff, Beatrice Carland, were divorced on September 4, 1964. The journal entry of the divorce decree reads in pertinent part as follows:

> The court further finds that the parties hereto have entered into an agreement which contains the mutual covenants of the parties hereto with regard to that for which they would jointly ask the court to decree regarding child custody and visitation, child support, alimony, property division and expenses. An executed copy of said agreement is attached hereto and made a part hereof.
>
> . . . .
>
> [I]n accordance with said agreement *Defendant is ordered to pay the premiums on, and to make irrevocable designation of Plaintiff as the sole primary beneficiary under and of, the policies of insurance on the life of defendant listed in Schedule "A"* appended

to the Settlement Agreement to which reference has been made herein.

(Emphasis added).

SCHEDULE "A"

Policies of Insurance on life of Ralph C. Carland

Policy No.	Company	Face Amount
17 083 285A	Metropolitan Life Ins. Co.	$ 5,000.00
22 127 306A	Metropolitan Life Ins. Co.	10,000.00
21 300 423	New York Life Ins. Co.	5,000.00
21 372 985	New York Life Ins. Co.	5,000.00
Ctf. 134181	Metropolitan Group Ins.	Current value, less 1000.00

(Journal Entry, Case No. 13926, D.Ct. Reno Co., Kan., Sept. 4, 1964). At the time the property settlement was negotiated, Beatrice Carland was a homemaker and Ralph Carland was an employee of Metropolitan Life Insurance Co., holding the position of District Manager, Hutchinson District Office.

On September 4, 1964, the value of Mr. Carland's life insurance under Policy Ctf. 134181 (group policy) was $14,000. At the time of Mr. Carland's death on April 9, 1987, some 23 years after the divorce decree, the value of Mr. Carland's life insurance under the group policy was $51,480.00.

In a letter to the defendant dated February 15, 1974, Mr. Carland said the following:

> Please note that the attached schedule is from my divorce decree of September 4, 1964, Case 13926. The decree provides that my Group life Insurance is designated to go to my divorced wife—Beatrice Hinds Carland—in the amount of the current value, less $1,000.00 as of the date of the decree.
>
> Therefore, I direct the Company to make the following Beneficiary designations:

Primary beneficiaries:

BEATRICE HINDS CARLAND—divorced wife, $13,000.00 (Current value, less $1,000.00 as of date of divorce, September 4, 1964)

OLIVE KOHLMEYER CARLAND—present wife, Group Insurance over and above $13,000.00

Secondary Beneficiaries:

RALPH C. CARLAND, JR. and CHRISTOPHER BRIEN CARLAND (Share and share alike of all to survivor)

I further request that the beneficiary designation be effective as of the date of this memo of record.

On or about March 1, 1974, Mr. Carland attempted to change the beneficiary of the group policy from solely Beatrice Carland to Beatrice Carland as beneficiary for $13,000.00, and Olive Carland, his second wife, as beneficiary for any amount in excess of $13,000.00. On the same day, Mr. Carland designated Olive Carland as beneficiary for all of the group life insurance. It is unclear which designation was completed first.

Ralph Carland died on April 9, 1987. On April 10, 1987, Beatrice Carland gave written notice to Metropolitan of her claim to the entire proceeds of the insurance policy under the aforementioned divorce decree and enclosed a copy of the relevant divorce decree provisions. The Tulsa Metropolitan office received the letter on April 12, 1987. On April 14, 1987, defendant's Tulsa office sent plaintiff claim application forms which required a death certificate. On May 4, 1987, while waiting for receipt of the death certificate requested from the New York City Bureau of Vital Records, plaintiff spoke with defendant's Wichita district office. She was assured by that office that she was the beneficiary of the policy, but that the company needed a death certificated in order for it to

formally process her claim. On May 6, 1987, plaintiff again spoke with the Wichita office, requesting information as to the policy's value. On May 8, 1987, plaintiff was informed by Wilma Sandoval of defendant's Wichita office, that a call to defendant's New York office had revealed that the company intended to pay another beneficiary. At this time Wilma Sandoval informed the New York office that the Wichita office was in possession of the divorce decree which designates plaintiff as the sole and irrevocable beneficiary of the proceeds of the policy. On May 11, 1987, the plaintiff sent a letter to one of Metropolitan's offices and enclosed a certified copy of the divorce decree. On May 13, 1987, plaintiff sought the intervention of the Kansas Insurance Commissioner's Office.

On or about May 22, 1987, Metropolitan paid Olive Carland all of the insurance proceeds plus interest. Subsequently, Metropolitan contacted Olive Carland and sent her a copy of the divorce decree. Olive Carland agreed that plaintiff Beatrice Carland was entitled to $13,000.00 under the divorce decree and reimbursed $13,000.00 to Metropolitan. Metropolitan paid plaintiff $13,623.99, claiming such represented her share under the 1964 divorce decree plus interest.

Thereafter, plaintiff filed a lawsuit against Metropolitan contending that she should have received all of the insurance proceeds, $51,480.00, from the group life policy rather than just $13,000.00 plus interest.

Standard of Review

Summary judgment is proper where the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). In considering a motion for summary judgment, this court must examine all evidence in

a light most favorable to the opposing party. *McKenzie v. Mercy Hospital*, 854 F.2d 365, 367 (10th Cir. 1988). Further, the party moving for summary judgment must demonstrate its entitlement beyond a reasonable doubt. *Ellis v. El Paso Natural Gas Co.*, 754 F.2d 884, 885 (10th Cir. 1985). The moving party need not disprove plaintiff's claim, but rather, must only establish that the factual allegations have no legal significance. *Dayton Hudson Corp. v. Macerich Real Estate Co.*, 812 F.2d 1319, 1323 (10th Cir. 1987).

In resisting a motion for summary judgment, the opposing party may not rely upon mere allegations, or denials, contained in its pleadings or briefs. Rather, the party must come forward with specific facts showing the presence of a genuine issue of material fact for trial and significant probative evidence supporting the allegations *Barnette v. Dresser Industries, Inc.*, 849 F.2d 1277, 1284 (10th Cir. 1988). One of the principal purposes of summary judgment is to isolate and dispose of factually unsupported claims or defenses, and the rule should be interpreted in a way that allows it to accomplish this purpose. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

Furthermore, it must be noted that cross-motions for summary judgment do not automatically empower the court to dispense with the determination of whether questions of material fact exist. *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt*, 700 F.2d 341, 349 (7th Cir.), *cert. denied*, 464 U.S. 804 (1983). The court must consider both cross-motions with no less careful scrutiny than an individual motion. *Missouri Pac. R. Co. v. Kansas Gas & Elec. Co.*, 862 F.2d 796 (10th Cir. 1988).

Conclusions of Law

Both parties agree that the group policy in question is an employee welfare benefit plan governed by ERISA, 29 U.S.C. §§ 1001 *et seq.*, and that the plaintiff is a "beneficiary" as that term is used under ERISA, 29 U.S.C.

§ 1002(8). Thus, the applicability of ERISA and the plaintiff's "beneficiary" status will not be addressed by the court. However the court will address whether this case is properly before the court under its removal jurisdiction; whether the plaintiff has stated a cause of action; and what standard of review to use in determining the propriety of Metropolitan's decision to pay the proceeds of the life insurance to two beneficiaries.

The Supreme Court has recently found that even if a complaint filed in state court claims to raise only state common law causes of action, Congress has manifested an intent that if the cause of action is preempted by ERISA, 29 U.S.C. § 1144(a), and displaced by ERISA's civil enforcement provisions, 29 U.S.C. § 1132(a), any such civil complaint is necessarily federal in character and properly removable under 28 U.S.C. § 1441(b). *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 60 (1987); and *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987).

Under 29 U.S.C. § 1144(a), ERISA preempts all state laws which "relate to" any employee benefit plan (except as provided in subsection (b), which exempts state laws (statutes) regulating the business of insurance). The Tenth Circuit, citing *Pilot Life*, has noted that the scope of ERISA preemption is very broad, particularly in light of the legislative history of ERISA. *Torix v. Ball Corp.*, 862 F.2d 1428, 1429 (10th Cir. 1988); *See also Straub v. Western Union Telegraph Co.*, 851 F.2d 1262, 1263 (10th Cir. 1988) (claims against former employer for breach of contract and negligent misrepresentation are preempted). Since the thrust of the plaintiff's complaint is that Metropolitan wrongfully and erroneously denied her benefits which were due her under the group plan life insurance policy, there can be little doubt such claim "relates to" the employee benefit plan under 29 U.S.C. § 1441(a). Thus, the court has removal jurisdiction in this matter under 28 U.S.C. § 1441(b).

In addition, the Supreme Court in *Taylor* found that the preemptive force of ERISA, 29 U.S.C. § 1144(a), is so powerful that it entirely displaces any state cause of action which "relates to" any "employee benefit plan," as described in 29 U.S.C. § 1001(a) and not exempt under 29 U.S.C. § 1001(b), and that the state law complaint is to be recharacterized as an action arising under federal law as allowed by ERISA § 502(a) (29 U.S.C. § 1132 (a)). *Taylor*, 481 U.S. at 64-67; *see also, Amos v. Blue Cross-Blue Shield of Alabama*, 868 F.2d 430, 432 (11th Cir. 1989) ("ERISA pre-emption does not act as a defense to a state-law claim, which is the usual effect of federal preemption; instead, ERISA pre-emption converts the related claim into a federal question"). Since 29 U.S.C. § 1132(a)(1)(B) provides in pertinent part, that "[a] civil action may be brought—by a participant or beneficiary—to recover benefits due to him under the terms of his plan," it is clear that plaintiff's claim for wrongful denial of benefits can be recharacterized within the scope of 29 U.S.C. § 1132(a) as a federal claim.

At this point the court notes that this is a relatively new and developing area of the law and there is not a lot of guidance in how to interpret many of the provisions of ERISA, 19 U.S.C. §§ 1001 *et seq.* However, this much is clear. The court must distinguish between "employee welfare benefit plans" (welfare plans) and "employee pension benefit plans" (pension plans). *See* 29 U.S.C. § 1002(1) & (2). One court has recently noted the following concerning the differences between welfare plans and pension plans:

> [E]mployee pension plans, which entail management of funds of money and thus require the establishment of trusts, receive extensive codification of mandatory provisions. In simple terms Congress has in essence written these contracts for the parties, or at least provided many of their key terms. The sections of the statute which apply solely to pension plans, wel-

fare plans being expressly excluded, legislate mandatory requirements for the covered plans. Sections 1051 through 1086, for instance, welfare plans expressly excluded by section 1051(1), set forth standards for creation of vested rights in pension plans, provide the conditions under which rights become nonforfeitable, set accrual requirements, state how the plans shall be funded, as well as setting forth numerous other requirements. These sections are best understood as creating express contract terms that are mandated by law when parties establish such plans.

Some of the remaining sections of the statute apply to both pension plans and welfare plans. Sections 1021 through 1031, for instance, establish reporting and disclosure requirements for the plans. Sections 1101 through 1114 legislate the fiduciary responsibilities of people who create or manage the plans. Section 1131 provides for criminal enforcement. Section 1132 creates a mechanism for civil enforcement. And section 1140 makes it unlawful to interfere with rights protected under the statute.

Therefore, Congress included welfare benefit plans within the scheme of ERISA, but did not provide an extensive array of mandatory provisions as it did for pension plans. The implication here is that parties retain a greater degree of freedom to contract between themselves as to what benefits will be provided under welfare plans, when and how they will be provided, what rights the respective parties have under the plans, as well as the right to negotiate other provisions as they see fit. In substance welfare benefit plans remain private contracts, with the parties determining what the express terms are. Because they are included in ERISA, determination of the meaning of their terms as well as the means for their enforcement have become a matter of federal

> law, but this law will only be fleshed out for welfare benefit plans as decisions are issued developing a federal common law to govern them. The statute provides the framework but courts must provide the substantive law.

Vogel v. Independence Federal Sav. Bank, 692 F.Supp. 587, 591-92 (D. Md. 1988). *See also*, *Pilot Life*, 481 U.S. at 56 (federal courts are to develop a "federal common law of rights and obligations under ERISA-regulated plans"); *Francise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 24, n.26 (1983) ("'a body of Federal substantive law will be developed by the courts to deal with issues involving rights and obligations under private welfare and pension plans'") (quoting 129 Cong. Rec. 29942 (1974) (remarks of Sen. Javits)); *Sampson v. Mutual Ben. Life Ins. Co.*, 863 F.2d 108 (1st Cir. 1988) (federal common law that had grown up around ERISA governed the interpretation of the employee policy).

The parties agree that the life insurance policy in question is part of an employee welfare plan, not a pension plan. Thus, as the *Vogel* court pointed out, §§ 1051-1086 expressly do not apply. *Vogel*, 692 F. Supp. at 591. As a result, plaintiff's argument that the 1964 divorce decree is a qualified domestic relation order under 29 U.S.C. § 1056(d)(3)(A) & (B) is without merit. Furthermore, the antialienation provision, 29 U.S.C. § 1056(d)(1), does not apply, and the policy in question, like any welfare plan benefit, may be freely assigned or encumbered. The court does note, however, that the policies and purposes that led Congress to create an exception to the antialienation provision for domestic relation orders may be a factor for this court to consider in applying the appropriate federal common law to the outcome of this case.

Given the fact that the parties agree that the policy in question is a welfare plan governed by ERISA and that the plaintiff is a beneficiary within the meaning of

ERISA, the main issue for the court to now address is what is the proper standard of review of Metropolitan's asserted wrongful denial of benefits.

The Supreme Court has recently determined that trust principles apply for determining the appropriate standard of review for actions under § 1132(a)(1)(B). *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. ——, 109 S.Ct. 948, 103 L.Ed.2d 80, 92 (1989). Applying established principles of trust law, the Supreme Court in *Bruch* held that "a denial of benefits challenged under § 1132(a)(1)(B) is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Id.* at 95.

Metropolitan asserts that the plan documents provide it with discretionary judgment based on the following provisions: (1) Part of the group policy cover page which states that Metropolitan agrees "to make the payments herein provided, with respect to the several Employees insured hereunder, in accordance with and subject to the provisions of this Policy;" (2) Section 7 of the group policy which states that "[u]pon receipt by the Insurance Company of satisfactory proof, in writing, that any Employee insured hereunder shall have died, the Insurance Company shall pay, subject to the terms hereof, to the Beneficiary of record of the Employee, the amount of Life Insurance, if any, in force hereunder on account of such Employee, in accordance with Section 6 hereof, at the date of his death;" and (3) part of the Metropolitan booklet entitled "Other Important Information," part of the summary plan description furnished to employees under ERISA, which states the following at page 21:

> The Metropolitan Employee Benefits Committee is a group of senior Company Officers given the authority and responsibility to direct the overall administration of your Insurance and Retirement Program and other employee benefit plans.

These provisions do not show that the "plan administrator has the power to construe uncertain terms or that eligibility determinations are to be given deference." *Bruch*, 103 L.Ed.2d at 93. At most, these provisions inform employees of the group plan of the inherently discretionary function of a plan administrator. The Supreme Court in *Bruch* rejected the argument that the inherently discretionary function of a plan administrator was enough to find the fiduciary had discretionary authority so as to justify differential review. *See Bruch*, 103 L.Ed.2d at 93. Since the provisions brought to the attention of the court do not show that the employees agreed to give the trustee the requisite discretionary authority, the court finds that *de novo* review is to be applied. The conclusion that this court ought to use *de novo* review is also supported by the fact that interpretation of a document outside the plan, the divorce decree, is key to the outcome of this case.

Metropolitan's major argument to justify paying only part of the insurance proceeds to the plaintiff is that there is only one possible interpretation of "current value" as it is used in the divorce decree—the value as of the date of the divorce. The only support cited by Metropolitan for such a mandatory interpretation of "current value" is the definition of "current" in the AMERICAN HERITAGE DICTIONARY, Second College Ed. (1985): "a. Belonging to the present time. b. now in progress." Such an argument is without merit.

If the parties had so clearly intended that definition of current value to apply, why didn't they just write out the applicable value on Schedule "A" like they did for the other policies? In addition, it is undisputed that the group policy had no actual cash value during the life of Mr. Carland. Thus, to say the parties clearly intended "current value" to mean $14,000.00 as the value as of the date of the divorce is arbitrary and totally based on hindsight. Furthermore, it is just as likely that the

definition of "current", "[b]elonging to the present time," means as of the date of insured's death, as it is likely that it means the value as of the date of the divorce. At the least, such term is ambiguous.

Moreover, it is undisputed that on or about March 1, 1974, Mr. Carland attempted to change the beneficiary of the group policy from solely Beatrice Carland to Beatrice Carland as beneficiary for $13,000.00 and to Olive Carland for the amount in excess of $13,000.00, and that on the same day Mr. Carland designated Olive Carland as the beneficiary for all of the group policy proceeds. Metropolitan admits that it is unable to determine which of these two beneficiary designations was executed first. Thus, it is clear that Metropolitan had notice of the possible rival claims before it paid out any of the proceeds to Olive Carland. Furthermore, Metropolitan admitted at oral argument that if it knows of a rival claim, its normal practice is to interplead the rival parties so the proceeds can be paid to the correct party. Thus, if Metropolitan had followed this normal interpleader procedure, payment to the wrong beneficiary could have been avoided.

Furthermore, the 1964 journal entry of the divorce decree states that the "Defendant is ordered to pay the premiums on, and to make *irrevocable designation* of the Plaintiff as the *sole primary beneficiary* under any of, the policies of insurance on the life of the Defendant." (Emphasis added). In addition, in a letter by Mr. Carland to Metropolitan dated February 15, 1974, Mr. Carland stated,

> Therefore, I direct the Company to make the following beneficiary designations:
>
> *Primary Beneficiaries*:
>
> BEATRICE HINDS CARLAND—divorced wife, $13,000.00 (Current value, less $13,000.00 as of date of divorce, September 4, 1964)

OLIVE KOHLMEYER CARLAND—present wife, Group Insurance over and above $13,000.00

Thus, it is clear that in addition to giving Metropolitan notice of a possible adverse claim by Beatrice Carland, this letter gave Metropolitan notice that the beneficiary designation desired by Mr. Carland was contrary to the 1964 journal entry of the divorce decree because it designates two "primary beneficiaries" instead of directing the plaintiff, Beatrice Carland, as the "sole primary beneficiary."

Therefore, if Schedule "A" 's use of current value is viewed in context of the 1964 journal entry, it is clear that at the date of the divorce the parties intended the plaintiff to be the sole primary beneficiary of the entire proceeds of the group policy. This conclusion is also supported by the affidavit of J. Richards Hunter, attorney of the Carlands for their 1964 divorce. In the affidavit, Mr. Hunter says the following:

> [Mr.] Carland explained that for these and other reasons, it was impossible to attribute to such group policy a "face value" at any given time. Only at death or retirement could all factors be taken into account and a true determination be made as to value. He stated further that the proper way to express that concept was that which he had employed in his list, in other words, "current value" meant "*value at date of death*", which was the only date having any meaning for employees like [Mr.] Carland under a group policy. He advised against using any other language, since doing so might only deprive his family of that which he wanted . . . them [to] have.

(Pltf.'s Memo. in Opp. to Def.'s Mtn. for Dism. or Summ. Judg., Aff. of J. Richards Hunter, p. 2). As a result, it is clear the plaintiff is entitled to the "current value"

of the group policy as of the date of Mr. Carland's death, $51,480.00, minus $1,000.00.

A rule which requires Metropolitan to pay the remainder of the wrongfully withheld proceeds, even though it has already paid out such remainder proceeds to another beneficiary, should not come as a shock to insurers because, as the Supreme Court said in *Bruch*, 103 L.Ed.2d at 93, "[a] trustee who is in doubt as to the interpretation of the instrument can protect himself by obtaining instruction from the court." *See also*, Bogert & Bogert § 559, at 162-168; Restatement (Second) of Trusts § 201, comment b (1959). Thus, the burden to collect the proceeds that were wrongfully paid out to Olive Carland should be on Metropolitan, not the plaintiff, as a matter of federal common law. *See Bruch*, 103 L.Ed.2d at 92.

Even if this court were to find that the trustee had discretionary authority under terms of the plan, there is plenty of evidence to establish the trustee abused his discretion in this case or acted unreasonably. For instance, 29 U.S.C. § 1133 provides in pertinent part as follows:

> In accordance with regulations of the Secretary, every employee benefit plan shall—
>
> > (1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, . . .

In addition, 29 C.F.R. 2560.503-1 (1988) provides in pertinent part as follows:

> (f) *Content of notice.* A plan administrator or, if paragraph (c) of this section is applicable, the insurance company, insurance service, or other similar organization, shall provide to every claimant who is denied a claim for benefits written notice setting

forth in a manner calculated to be understood by the claimant:

(1) The specific reason or reasons for the denial;

(2) Specific reference to pertinent plan provisions on which the denial is based;

(3) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

(4) Appropriate information as to the steps to be taken if the participant or beneficiary wishes to submit his or her claim for review.

(g) *Review procedure.* (1) Every plan shall establish and maintain a procedure by which a claimant or his duly authorized representative has a reasonable opportunity to appeal a denied claim to an appropriate named fiduciary or to a person designated by such fiduciary, and under which a full and fair review of the claim and its denial may be obtained. Every such procedure shall include but not be limited to provisions that a claimant or his duly authorized representative may:

(i) Request a review upon written application to the plan;

(ii) Review pertinent documents; and

(iii) submit issues and comments in writing.

The facts in this case indicate that Metropolitan had notice of the plaintiff's claim for the life insurance proceeds in this case, and despite such knowledge paid the full amount of the proceeds out to Olive Carland. There is no evidence that Metropolitan gave plaintiff written notice of the reasons for denial of her claim as required by 29 C.F.R. § 2560.503-1(f) or that it provided plaintiff

with any type of review procedure as required by 29 C.F.R. § 2560.503-1(g).[1]

If Metropolitan had followed the proper procedures and not paid out the life insurance proceeds so quickly to Olive Carland, it would have seen that the 1964 journal entry of the divorce, which required Mr. Carland to designate the plaintiff as the "irrevocable . . . *sole* primary beneficiary" of the policy in question, was clearly in conflict with Mr. Carland's February 15, 1974 letter which designated another "primary beneficiary" in addition to the plaintiff. (Emphasis added). At that point, a reasonable fiduciary would have at least sought instructions from the court on how to distribute the proceeds. *See Bruch*, 103 L.Ed.2d 93. Thus, payment of the proceeds to the wrong beneficiary could have been avoided. Therefore, given the uncontroverted facts in this case, the court finds that Metropolitan's actions in this case were unreasonable.

At this point the court notes that plaintiff has raised the issue of her entitlement to attorney fees under 29 U.S.C. § 1132(g)(1). Since the parties have not had an opportunity to submit briefs thereon, the court will reserve its determination until such time as the parties have fully briefed the issues of entitlement to attorney fees and the reasonable amount of such fees.

IT IS THEREFORE ORDERED this 26th day of December, 1989, that the defendant's motion to dismiss or for summary judgment is denied.

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[1] The court notes that the usual remedy for not following proper procedures is a remand to the fiduciary requiring him to follow the correct procedures. *See Wolfe v. J.C. Penney Co., Inc.*, 710 F.2d 388 (7th Cir. 1983); *Grossmuller v. Intern. Union, United Auto., Aero.*, 715 F.2d 853 (3d Cir. 1983). However, in this case, where the insurance company has already paid out the proceeds to the wrong person, such remand would be a useless procedure which would needlessly delay the ultimate outcome of this case. In addition, the failure to give the required notice is not an essential element of our ultimate finding that Metropolitan acted unreasonably in this case.

IT IS FURTHER ORDERED that the plaintiff's motion for summary judgment is granted. The parties are directed to brief the issues of plaintiff's entitlement to attorney fees and the reasonable amount of such fees.

/s/ Patrick F. Kelly
PATRICK F. KELLY
Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 90-3014

BEATRICE HINDS CARLAND,
Plaintiff-Appellee,

v.

METROPOLITAN LIFE INSURANCE COMPANY,
Defendant-Appellant.

Filed June 21, 1991

Before HOLLOWAY, Chief Judge, McKAY, LOGAN, SEYMOUR, MOORE, ANDERSON, TACHA, BALDOCK, BRORBY, and EBEL, Circuit Judges, and KANE, District Judge.*

This matter comes on for consideration of appellant's suggestion for rehearing en banc, which the court treats as a petition for rehearing and suggestion for rehearing en banc.

Upon consideration whereof, the petition for rehearing is denied by the panel that rendered the decision.

In accordance with Rule 35(b), Federal Rules of Appellate Procedure, the suggestion for rehearing en banc

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* The Honorable John L. Kane, Jr., Senior United States District Judge for the District of Colorado, sitting by designation.

was transmitted to all of the judges of the court who are in regular active service. No member of the panel and no judge in regular active service on the court having requested that the court be polled on rehearing en banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing en banc is denied.

ENTERED FOR THE COURT

Robert L. Hoecker
Clerk

By /s/ Patrick Fisher
PATRICK FISHER
Chief Deputy Clerk

STATUTES INVOLVED IN THE CASE

ERISA § 2 [29 U.S.C. § 1002]. Definitions

For purposes of this subchapter:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

(2)(A) Except as provided in subparagraph (B), the terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established for or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(i) provides retirement income to employees, or

(ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond,

regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

. . .

(8) The term "beneficiary" means a person designated by a participant, or by the terms of an employee benefit

plan, who is or may become entitled to a benefit thereunder.

ERISA § 404 [29 U.S.C. § 1104]. Fiduciary duties

(a) Prudent man standard of care

(1) Subject to section 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter or subchapter III of this chapter.

. . .

ERISA § 206 [29 U.S.C. § 1056; as amended by the Retirement Equity Act of 1984]. Form and payment of benefits

. . .

(d) Assignment or alienation of plan benefits

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

. . .

(3)(A) Paragraph (1) shall apply to the creation, assignment or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph—

(i) the term "qualified domestic relations order" means a domestic relations order—

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term "domestic relations order" means any judgment, decree or order (including approval of a property settlement agreement) which—

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law).

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies—

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies.

(D) A domestic relations order meets the requirements of this subparagraph only if such order—

(i) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(ii) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(iii) does not require the payments of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determind to be a qualified domestic relations order.

. . .

(G) (i) In the case of any domestic relations order received by a plan—

(I) the plan administrator shall promptly notify the participant and any other alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(II) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(ii) Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Such procedures—

(I) shall be in writing,

(II) shall provide for the notification of each person specified in a domestic relations order as entitled to payment of benefits under the plan (at the address included in the domestic relations order) of such procedures promptly upon receipt by the plan of the domestic relations order, and

(III) shall permit an alternate payee to designate a representative for receipt of copies of notices that

are sent to the alternate payee with respect to a domestic relations order.

(H)(i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by a plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this subparagraph referred to as the "segregated amounts") which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(ii) If within the 18-month period described in clause (v) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(iii) If within the 18-month period described in clause (v)

(I) it is determined that the order is not a qualified domestic relations order, or

(II) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(iv) Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in clause (v) shall be applied prospectively only.

(v) For purposes of this subparagraph, the 18-month period described in this clause is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(I) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(i) treating a domestic relations order as being (or not being) a qualified domestic relations order, or

(ii) taking action under subparagraph (H),

then the plan's obligations to the participant and each alternate payee shall be discharged to the extent of any payment made pursuant to such act.

(J) A person who is an alternate payee under a qualified domestic relations order shall be considered for purposes of any provision of this chapter a beneficiary under the plan. Nothing in the preceding sentence shall permit a requirement under section 1301 of this title of the payment of more than 1 premium with respect to a participant for any period.

(K) The term "alternate payee" means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

. . .

ERISA § 514 [29 U.S.C. § 1144]. Other laws

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under sction 1003(b) of this title. This section shall take effect on January 1, 1975.

(b) Construction and application

. . .

(7) Subsection (a) shall not apply to qualified domestic relations orders (within the meaning of section 1056(d)(3)(B)(i) of this title).

(c) Definitions

For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

. . .